

## ENCROACHMENT ON EASEMENT

WHEREAS, **Oncor Electric Delivery Company LLC, ("Oncor")**, formerly known as TXU Electric Delivery Company and successor in interest to Oncor Electric Delivery Company, is the User of a an easement in Collin County, Texas, which is recorded in Volume 555, Page 189, Volume 555, Page 196 and Volume 555, Page 108 of the Deed Records of Collin County, Texas ("Easement"); and

WHEREAS, the **City of Frisco ("User")**; desires permission to construct, operate and maintain a **10' Wide Hike and Bike Trail ("Encroaching Facility")** within the boundaries of the Easement ("Easement Area").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Oncor and User do hereby agree as follows:

1. **Location of Encroaching Facility.** User may locate the Encroaching Facility in the Easement Area as described and shown on the attached drawing, marked **Exhibit "A"** and incorporated herein. User may not relocate the Encroaching Facility within the Easement Area without the consent and approval of Oncor, which consent and approval shall not be unreasonably denied.
2. **Restrictions on Use of Easement Area.** User shall use only so much of the Easement Area as may be necessary to construct, maintain and repair the Encroaching Facility. User shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention and abatement of nuisances in or upon or connected with said Encroaching Facility. At the conclusion of any construction, User shall remove all debris and other materials from the Easement Area and restore the Easement Area to the same condition it was in prior to the commencement of User's construction thereon or in proximity thereto, with exception to the encroachment(s) permitted herein.

User shall not place trash dumpsters, toxic substances or flammable material in the Easement Area. Further, if the Easement Area has transmission or distribution facilities located thereon, User shall not place upon the Easement Area any improvements, including but not limited to, buildings, light standards, fences (excluding barriers installed around transmission tower(s)), shrubs, trees or signs unless approved in advance in writing by Oncor. Additional general construction limitations on encroachments are described and listed in **Exhibit "B"**, attached hereto and by reference made a part hereof.

3. **Maintenance of Encroaching Facility.** User, at User's sole expense, shall maintain and operate the Encroaching Facility. Oncor will not be responsible for any costs of construction, reconstruction, operation, maintenance or removal of User's Encroaching Facility.

4. **Risk and Liability.** User assumes all risks and liability resulting or arising from or relating to User's use, the existing condition or location, or existing state of maintenance, repair or operation of the Easement Area. It is further agreed that Oncor shall not be liable for any damage to the Encroaching Facility as a result of Oncor's use or enjoyment of its Easement; provided such damage could not be reasonably foreseeable. Any Oncor property damaged or destroyed by User or its agents, employees, invitees, contractors or subcontractors shall be repaired or replaced by Oncor at User's expense provided such expense is reasonable and necessary and payment is due upon User's receipt of an invoice from Oncor.

5. **Indemnification.** User, to the extent allowable by law, agrees to defend, indemnify and hold harmless Oncor, its officers, agents and employees, from and against any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, for personal injury (including death), property damage or other harm for which recovery of damages is sought or suffered by any person or persons that may arise out of, or be occasioned by, the negligence, misconduct or omission of User, its officers, agents, associates, employees, contractors, subcontractors, subconsultants, or any other person entering onto the Easement Area or may arise out of or be occasioned by the use of the Encroaching Facility, except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of Oncor, its officers, agents, or employees or separate contractors, and in the event of joint and concurrent negligence of both Oncor and User, responsibility and indemnity, if any, shall be apportioned comparatively. Nothing in this paragraph is intended to waive any governmental immunity or other defenses available to the parties under Texas law.

6. **High Voltage Restrictions.** Use of draglines or other boom-type equipment in connection with any work to be performed on the Easement Area by User, its employees, agents, invitees, contractors or subcontractors must comply with Chapter 752, Texas Health and Safety Code, the National Electric Safety Code and any other applicable safety or clearance requirements. Notwithstanding anything to the contrary herein, in no event shall any equipment be within fifteen (15) feet of the Oncor power lines situated on the aforesaid easement. User must notify the **North Dallas Region Transmission Department (903) 243-4788** forty eight hours prior to beginning of any work on the Easement Area.

7. **Removal by Oncor.** If at any time in the future, the Encroaching Facility, in the reasonable judgment of Oncor, interferes with Oncor's use or enjoyment of its easement rights, Oncor shall have the right to remove said Encroaching Facility. Oncor shall notify User in writing that within 90 days the Encroaching Facility must be removed at User's sole cost. If at the end of the 90 day period the Encroaching Facility has not been removed, Oncor may remove it, at User's expense. Oncor will not be responsible nor will compensation be paid for damages incurred by such removal, including, but not limited to, damages for loss of use of the Encroaching Facility or business interruption. However, in an emergency, Oncor shall have the right to immediately remove the Encroaching Facility. If the Encroaching Facility is removed, Oncor will not unreasonably withhold or delay consent for User to relocate the Encroaching Facility within the Easement Area.

8. **Default and Termination.** It is understood and agreed that, in case of default by User or its agents in any of the terms and conditions herein stated and such default continues for a period of thirty (30) days after Oncor notifies User of such default in writing, Oncor may at its election forthwith terminate this agreement and upon such termination all of User's rights hereunder shall cease and come to an end. This agreement shall also terminate upon user's express written abandonment of the Encroaching Facility.

This agreement shall extend to and be binding upon User and its successors and assigns, and is not to be interpreted as a waiver of any rights held by Oncor under its Easement.

**APPROVAL:**

**Oncor Electric Delivery Company LLC,**

By: \_\_\_\_\_

Thomas F. Newsom

Attorney-In-Fact

**ACCEPTANCE:**

**City of Frisco**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, as the \_\_\_\_\_ of the **City of Frisco**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of the City of Frisco, and for the purposes and consideration therein expressed and in the capacity therein stated, and that he/she was authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D.2008.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS

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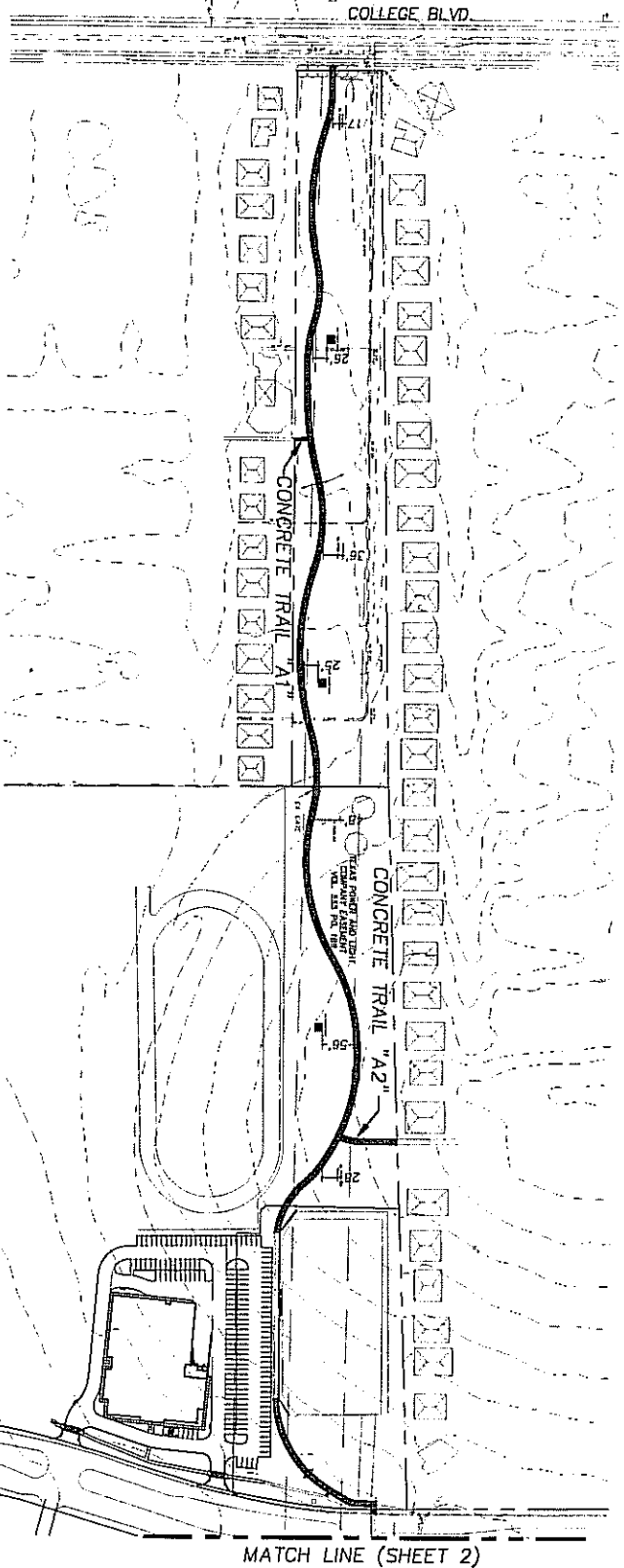
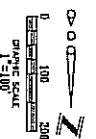
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Thomas F. Newsom, Attorney in Fact of **ONCOR ELECTRIC DELIVERY COMPANY LLC**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of Oncor Electric Delivery Company LLC. and for the purposes and consideration therein expressed and in the capacity therein stated, and that he was authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D.2008.

\_\_\_\_\_  
Notary Public in and for the State of Texas

# Exhibit A



TRAIL "A"

## LEGEND

---	EXISTING CURBWAYS
---	PROPOSED TRAIL
---	CONCRETE TRAIL
---	EXISTING TRAIL

THIS DOCUMENT IS THE PROPERTY OF O'DONALD ENGINEERING, P.C. AND SHALL BE RETURNED TO THE OFFICE OF ORIGINATOR UPON COMPLETION OF THE PROJECT.

TRAIL "A"	TRAIL "A"
TRAIL WIDTH - 32'	TRAIL WIDTH - 32'
TRAIL LENGTH - 100'	TRAIL LENGTH - 100'
TRAIL "A2"	TRAIL "A2"
TRAIL WIDTH - 32'	TRAIL WIDTH - 32'
TRAIL LENGTH - 100'	TRAIL LENGTH - 100'
TRAIL "B"	TRAIL "B"
TRAIL WIDTH - 10'	TRAIL WIDTH - 10'
TRAIL LENGTH - 100'	TRAIL LENGTH - 100'
TRAIL "C"	TRAIL "C"
TRAIL WIDTH - 10'	TRAIL WIDTH - 10'
TRAIL LENGTH - 100'	TRAIL LENGTH - 100'

- NOTES:
1. TRAILS ARE DESIGNED AND CONSTRUCTED TO BE USED FOR PEDESTRIAN AND BICYCLE TRAVEL ONLY. TRAILS SHALL BE CONSTRUCTED TO MEET THE REQUIREMENTS OF THE AMERICAN NATIONAL STANDARD FOR BICYCLE TRAILS (ANSI Z39.7-1999).
  2. THE TRAIL SHALL BE 10' WIDE.
  3. THE TRAIL SHALL FOLLOW EXISTING CROWN OF ROAD AND EXISTING TRAIL.
  4. TRAIL SHALL BE CONSTRUCTED TO MEET ALL CITY REQUIREMENTS.

**ONCOR EXHIBIT (1 OF 2)**

**COLLEGE PARKWAY TRAIL**

**CITY OF FRISCO**

**COLLIN COUNTY, TEXAS**

**O'DONALD ENGINEERING LLC**

1601 E Lamar Blvd, Suite 210

Arlington, Texas 76010

Phone 817.294.0202

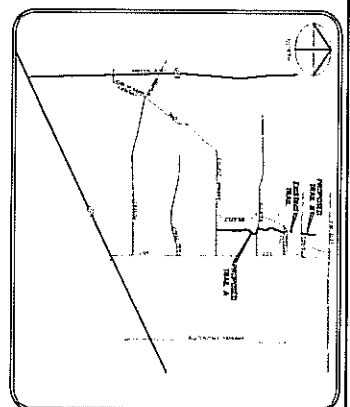
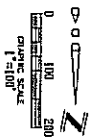
Fax 817.294.0430

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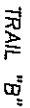
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EXISTING CONDITIONS:  
PROPOSED TRAIL  
CONNECTING TRAIL  
EXISTING TRAIL

NOTES:

1. TRAPS WERE DESIGNED AND DIAGNOSTICABLES WERE CORRECTED UTILIZING THERM WELDS AND WELD FILL INSPECTION. HALL WELDED ALL CRACKS. CONSTRUCTION SHALL VERIFY ALL CRACKS, BUILDERS AND COOPERATES VIA HIGH DPM INDEPENDENT SURVEY.
2. THE TRAP SHALL BE 10" WIDE.
3. THE TRAP SHALL FILLER EXISTING CONDITIONS EXCEPT AROUND DRAINAGE SLEETS AND WHICH REQUIRED TO MEET AD/AS CRITERIA.



ONCOR EXHIBIT (2 OF 2)  
COLLEGE PARKWAY TRAIL  
CITY OF FRISCO  
COLLIN COUNTY, TEXAS

1601 E. Lamar Blvd., Suite 210  
Arlington, Texas 76017  
Phone 817/794.0202  
Fax 817/548.8430

**CONSTRUCTION LIMITATIONS**  
**ON ONCOR ELECTRIC DELIVERY COMPANY RIGHT OF WAY**  
**EXHIBIT "B"**

1. You are notified, and should advise your employees, representatives, agents, and contractors, who enter the property that they will be working in the vicinity of high voltage electrical facilities and should take proper precautions, included but not limited to the following stipulations and in compliance, at all times, with Chapter 752, V.T.C.A., Health & Safety Code.
2. Blasting is not to be permitted on Oncor right-of-way or under Oncor lines.
3. Construction on electric transmission line easements acquired by Oncor after January 1, 2003 shall comply with the requirements of Public Utility Commission Substantive Rules §25.101, as amended from time to time.
4. Grading will be done in order to leave the right-of-way as near as possible to present condition. Spoil dirt will be removed from the right-of-way and no trash is to be left on right-of-way. Slopes shall be graded so that trucks can go down the right-of-way when required and such that the slopes can be mechanically maintained.
5. Equipment and materials will not be stored on the right-of-way during construction without written approval of the Supervisor of Regional Transmission.
6. Street or road crossings are to be based on drawings submitted. Any change in alignment or elevation will be resubmitted for approval.
7. No signs, lights or guard lights will be permitted on the right-of-way.
8. Equipment shall not be placed within fifteen (15) feet of the power lines.
9. Any pre-approved fencing will not exceed eight (8) feet in height, and if metal in nature, will be grounded, at ten (10) feet intervals, with an appropriate driven ground. Gates should be at least sixteen (16) feet in width to allow Oncor access to the right-of-way.

10. No dumpsters will be allowed on Oncor right-of-way or fee owned property.
11. Draglines will not be used under the line or on Oncor right-of-way.
12. The existing grade shall not be disturbed, excavated or filled within 25 feet of the nearest edge of any tower.
13. Right-of-way will be protected from washing and erosion by Oncor approved method before any permits are granted. No discharging of water will be allowed within any portion of the right of way.
14. No obstruction shall be installed on the right-of-way that would interfere with access to Oncor structures or prevent mechanical maintenance.
15. Before any work is done under Oncor lines or by Oncor structures notify the Region Transmission Department, (903) 243-4788.
16. No hazardous materials will be stored on the right of way.
17. For purposes of this document, "Hazardous Materials" means and includes those substances, including, without limitation, asbestos-containing material containing more than one percent (1%) asbestos by weight, or the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity and includes any items included in the definition of hazardous or toxic waste, materials or substances under any Hazardous Material Law. "Hazardous Material Laws" collectively means and includes any present and future local, state and federal law relating to the environment and environmental conditions including, without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA"), 42 U.S.C. §§9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Material Transportation Act, 49 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §741 et seq., the Clean Water Act, 33 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f-330j, and all the regulations, orders, and decrees now or hereafter promulgated thereunder.



18. Brush and cut timber will not be piled or stacked on Oncor right-of-way or will not be burned upon or in close proximity to the conductors or towers.
19. No structures or obstructions, such as buildings, garages, barns, sheds, guard houses, etc., will be permitted on the right-of-way.
20. Landscaping on Oncor right-of-way is permitted when Oncor approves landscaping plans in writing. No lighting or sprinkler systems are allowed on the right-of-way.